

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 28, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

KAUAI

Termination of Revocable Permit No. S-6240, Kilauea Irrigation Co., Inc., Permittee, Hanalei, Kauai, Tax Map Key: (4) 5-1-1:2.

PURPOSE:

Termination of Revocable Permit No. S-6240, Kilauea Irrigation Co., Inc., Permittee.

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Moloaa Forest Reserve situated at Papaa, Hanalei, Kauai, identified by Tax Map Key: (4) 5-1-1:2, as shown on the attached map labeled Exhibits A and B.

AREA:

7.12 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _____ NO x

CHARACTER OF USE:

Right, privilege and authority to develop and utilize government waters from government land at Papaa within the Moloaa Forest Reserve, together with the right to construct, operate, repair and maintain a water transportation system within the Ka Loko ditch right of way and Puu Ka Ele Stream.

COMMENCEMENT DATE OF PERMIT:

Commenced on November 11, 1985.

MONTHLY RENTAL:

\$27.00

THE KALOKO DITCH SYSTEM

This Board should be made aware that Revocable Permit S-6240 gives Kilauea Irrigation Co., Inc. ("KIC") the right to divert surface water from the Puu Ka Ele stream and direct the water into the Kaloko Ditch system, part of which crosses over State lands.

THE REVOCABLE PERMIT AND THE DEFAULT

Pursuant to the provisions contained in Revocable Permit S-6240, Kilauea Irrigation Co., Inc., Permittee, was mailed a default notification letter dated January 4, 2007 for:

- ☐ Failure to keep lease rental payments current
- ☐ Failure to post required security deposit
- ☐ Failure to post required fire insurance policy
- ☒ Failure to post required liability insurance policy

This notice offered the Permittee a thirty-day cure period to correct the default. This cure period expired on February 4, 2007. This breach has not been cured.

The current status of all permit compliance items is as follows:

RENT: The Permittee is current with all rent obligations to September 30, 2007.

INSURANCE: The Permittee has not posted the required liability insurance policy. Expired on December 1, 2006.

SECURITY DEPOSIT:

The Permittee has posted the required security deposit (\$54.00).

In the past two (2) years default notification letters were sent on July 28, 2006 and October 18, 2006 to keep the monthly rent

payment current. Payments were made on August 7, 2006 and October 18, 2006.

By letter dated February 2, 2007, Mr. Tom Hitch informed the Department that KIC has been unable to procure the required liability insurance as a result of the March 2006 Ka Loko Dam disaster that claimed the lives of 7 Kauai residents. There are various civil matters pending before the Court.

Staff responded by letter dated February 21, 2007 by allowing KIC additional time, and suggested KIC look at the possibility of procuring the insurance from mainland surplus line carriers that are rated at least B+ or higher by A.M. Best rating service.

By letter dated March 14, 2007, Mr. Hitch informed the Department that AIG was the only carrier willing to consider KIC's application for insurance, but that the minimum annual premium would amount to \$25,000 more than KIC's annual gross revenues from its water operations. Mr. Hitch further inquired whether the Department would consider allowing another entity to hold the month-to-month revocable permit. Staff advised Mr. Hitch that all State tenants are required to obtain liability insurance, whether on a long-term lease or a month-to-month revocable permit.

In June 2007, staff was informed by Mr. Hitch that he was still unable to obtain the required liability insurance coverage. Mr. Hitch believed the farmers in the area still wanted the water from the Kaloko Reservoir, and that they were working with an entity called Business Insurance Company about the possibility procuring the required insurance. Staff followed-up this conversation with a letter dated July 10, 2007, suggesting that the farmers consider looking into certain mainland surplus line carriers that are rated B+ or better from A.M. Best rating service. There was no subsequent response from Mr. Hitch or anyone else to our letter dated July 10, 2007.

Apparently KIC was not Mr. Hitch's main source of income. He had a separate contracting business that apparently suffered as a result of the Kaloko lawsuits. Mr. Hitch claimed that as a result of the lawsuits, his liability insurance was not renewed, and that he was no longer able to secure a bond. Therefore, Mr. Hitch placed his contractor's license on inactive status. According to Mr. Hitch, since he was unable to generate income from his contracting business in Hawaii, it forced him to look for work elsewhere. Staff has heard Mr. Hitch may have relocated to Southeast Asia.

Apparently KIC may also be regulated by the PUC, since it distributes water to certain farmers. Because the stream diversion Revocable Permit does not grant any right or authorization to KIC to take water from the privately owned Kaloko Reservoir and distribute the same off-site to the farmers and others, any termination of the stream diversion Revocable Permit should not in itself directly

impact KIC's status with the PUC.

Staff contacted Department of Agriculture (DOA) and Agribusiness Development Corporation (ADC). The mission for both of these agencies is to assist farmers. Both DOA and ADC do not have adequate staff to operate an irrigation system on behalf of the farmers in the Kaloko Reservoir area. Even if the lands, ditch system and reservoir were somehow under the management and control of ADC or DOA, both agencies would probably still be required to issue a permit or license to a private entity to operate and maintain the system, and both DOA and ADC would also require liability insurance coverage naming the agency as an additional insured. In any event, no such entity with the ability to procure the required liability insurance coverage has stepped forward willing to take on such an irrigation system.

By letter dated August 24, 2007, Mr. William C. McCorriston on behalf of Pflueger Properties, owners of part of the land beneath the Kaloko Reservoir, demanded the State to cease and desist diverting water into the Kaloko Ditch system which outlets water into the Kaloko Reservoir (Exhibit C).¹ Mr. McCorriston claimed Pflueger Properties' demand is deemed necessary to prevent and/or to mitigate conditions which would lead to the breach of the Kaloko Reservoir and/or its appurtenant facilities. Although it is unclear to what extent the action demanded is actually necessary to prevent another breach from occurring, nevertheless, because KIC is unable to procure the required liability coverage and because it appears Mr. Hitch may have already departed the State, staff is recommending that the Land Board terminate the stream diversion Revocable Permit issued to KIC.

Upon termination of the Revocable Permit, KIC is responsible to remove all structures causing the diversion and/or do all things necessary to stop the surface water from entering the Kaloko Ditch, and keep the surface water in the Puu Ka Ele Stream. As a practical matter, because Mr. Hitch is the sole operator of KIC and apparently has left town, staff will likely need to procure a contractor to perform the work necessary to stop the diversion and keep the water in the stream. In consultation with DLNR's Chief Engineer, he is not recommending the removal of the existing structures, but possibly building another structure (e.g., a wall blocking the intake into the Kaloko Ditch, or something similar) at the point of diversion. Permits will be required from the Commission on Water Resource Management, and possibly the Office of Conservation and

¹ Mr. McCorriston's letter dated August 24, 2007 refers to a prior letter he sent in December 2006, as if the State never responded. However, as established by Exhibit D, deputy attorney general William Wynhoff responded to Mr. McCorriston informing that he was representing the Department in relation to his December 12, 2006 letter, and Mr. Wynhoff asked a series of questions about Kaloko and the Water Rights Agreement. Mr. McCorriston has yet to respond to any of Mr. Wynhoff's questions.

Coastal Lands. The terrain is rugged and heavily vegetated. Access will be a challenge. It is likely that labor and materials will need to be brought in by helicopter. It will take at least 3 to 6 months for staff to obtain the necessary permits, procure the contractor, and to actually complete construction of a structure that would stop the diversion and keep the water in the stream. Therefore, in addition to terminating the stream diversion Revocable Permit, staff is requesting that: (1) the Board hold KIC responsible for all costs incurred by staff in connection with building a structure to stop the diversion of water into the Kaloko Ditch, and keep the water in Puu Ka Ele stream; (2) authorize staff to determine the effective date of termination of the Revocable Permit issued to KIC. At this time, staff contemplates deferring the effective date of termination until immediately prior to commencing construction.

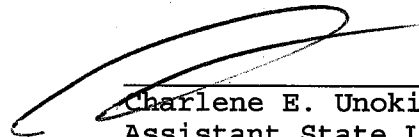
RECOMMENDATION: That the Board:

1. Authorize the termination of Revocable Permit No. S-6240, but authorize staff to determine the effective date of termination of the Revocable Permit S-6240 issued to KIC.²;
2. Authorize the retention of all sums heretofore paid or pledged under Revocable Permit No. S-6240 to be applied to any past due amounts, and any future costs incurred by staff in connection with building a structure to stop the diversion of water into the Kaloko Ditch, and keep the water in Puu Ka Ele stream;
3. Terminate the Revocable Permit and all rights of KIC and all obligations of the State (if any) on the effective date of termination as determined by staff (as authorized above), provided that any and all obligations of KIC which have accrued up to the effective date termination or which are stated in the Permit to survive termination shall endure past such termination date until duly fulfilled, and further provided that the State reserves all other rights and claims as allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due and owed to the State of Hawaii under Revocable Permit No. S-6240 as stated above, and to pursue all other rights and remedies against all responsible parties.

² At this time, staff contemplates deferring the effective date of termination until immediately prior to commencing construction.

September 28, 2007


Respectfully Submitted,



Charlene E. Unoki
Assistant State Lands Administrator

Russell Y. Tsuji
State Lands Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Interim Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT

REVOCABLE PERMIT NO. S-6240

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective the 1st day of November, 1985,

KILAUEA IRRIGATION COMPANY, INC.
P. O. Box 1826
Honolulu, Hawaii 96805

of City and County of Honolulu, State of Hawaii
(City and)

hereinafter called the "PERMITTEE", is permitted to enter and occupy on a month-to-month basis that certain parcel of Government land (and any improvements located thereupon) situate at

Portion of the Moloaa Forest Reserve at Papaa, Hanalei, Kauai

TMK: 5-1-01:02

County of Kauai
(City and)

State of Hawaii, as indicated on the plan attached hereto, if any, and made a part hereof, containing an approximate area of 7.12 acres which parcel is hereinafter referred to as the "Premises".

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Occupy and use said Premises for the following specified purposes only:
Right, privilege and authority to develop and utilize government waters from government land at Papaa within the Moloaa Forest Reserve, together with the right to construct, operate, repair and maintain a water transportation system within the Ka Loko Ditch Right of Way and Puu Ka Eie Stream
2. Pay, at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, or at the Office of its Land Agent on the Island where said Premises are located, the sum of \$4.00 per million gallons of water taken, used and/or developed or \$22.00, whichever is higher.

The interest rate on any and all unpaid or delinquent rentals shall be at one per cent (1%) per month.

Rev. Sept. 1982

EXHIBIT "A"

3. Upon execution of this Permit, deposit with the Board of Land and Natural Resources, hereinafter called the "Board", the sum of \$ 44.00 as security for the faithful performance of all of the terms and conditions herein. The whole or portion of said deposit will be returned to the Permittee upon termination of this Permit, but only after all of the terms and conditions of this Permit have been observed and performed to the satisfaction of the representatives of the Department of Land and Natural Resources.
4. At the Permittee's own cost and expense, keep the government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties and contingencies, for the full insurable value of such improvements. Said policies are to be in favor of the Board and are to be filed and deposited with said Board. In the event of loss, damage or destruction of such improvements, the Board shall retain from the proceeds of the policies such amounts deemed by it to be necessary to cover the loss, damage or destruction of or to the government-owned improvements and the balance of such proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) days' notice in writing before vacating the Premises.
6. If a holdover lessee or licensee, pay all real property taxes, which shall be assessed against the Premises from the date of this Permit. In addition, a Permittee, not a holdover lessee or licensee, who has occupied the Premises for commercial purposes for a continued period of one year or more, shall pay the real property taxes assessed against said premises after the first year of the Permit as provided in Section 246-36(1)(d), Hawaii Revised Statutes.
7. Observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments affecting the Premises or improvements.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary and orderly condition.
11. Pay when due, all payments for water and other utilities, and whatever charges for the collection of garbage that may be levied.
12. Not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper or offensive use of the Premises.
13. At all times with respect to the Premises use due care for public safety and agrees to defend, hold

harmless and indemnify the State of Hawaii from and against all claims or demands for damage, including claims for property damage, personal injury or death, arising on or about the Premises, or by any fire or explosion thereon, or growing out of, or caused by any failure on the part of the Permittee to maintain the Premises in accordance with the terms and conditions of this Permit excluding, however, the use of the Premises by such persons specifically authorized by the Board for hunting or other uses.

14. Procure, at its own cost and expense, and maintain during the entire period of this Permit, a policy or policies of comprehensive public liability insurance, in an amount acceptable to the Chairman or his designated representative, insuring the State of Hawaii and the Permittee against all claims for personal injury, death and property damage excepting those claimants which have been specifically authorized to use the Premises for hunting or other uses; that said policy or policies shall cover the entire Premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of the Permittee. The Permittee shall furnish the State with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer to notify the State of any intention to cancel any such policy sixty (60) days prior to actual cancellation. The procuring of this policy shall not release or relieve the Permittee of its responsibility under this Permit as set forth herein or limit the amount of its liability under this Permit.

B. Additional Conditions:

1. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) days prior to such revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) business days prior to such revocation.
2. If the Permittee does not vacate the Premises upon the revocation of the Permit by the Board, the Permittee shall pay to the State liquidated damages at the daily rate of \$ 5.00 for each day, or portion thereof, the Permittee remains on the Premises over said date of revocation by said Board. Such payment is to be in addition to any other rights or remedies the Board may be entitled to pursue for breach of contract, or for illegal occupancy, including the right to evict the Permittee without court action, and the cost thereof to be paid by the Permittee.
3. Should the Permittee fail to vacate the Premises upon the revocation of the Permit, the Board, its agents and/or representatives may enter upon the Premises and remove and dispose of, at Permittee's costs and expenses, all vehicles, equipment, materials, and/or any personal property remaining on the Premises, and the Permittee agrees to pay for all such costs and expenses of removal and disposition.

4. The Board may at any time increase or decrease the monthly rental by written notice thereof at least thirty (30) days prior to the date of change of rent.
5. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination of this Permit, or within such additional period as the Board in its discretion may allow, to remove such improvements from the Premises; provided, however, that in the event the Permittee shall fail so to remove such improvements within thirty (30) days, after written notice to remove, the Board may elect to retain said improvements or shall remove the same and charge the cost of removal and storage if any to the Permittee.
6. The Board reserves the right to itself, its agents and/or representatives to enter or cross any portion of the premises at any time in the performance of its duties.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged or otherwise transferred or disposed of.
8. It is understood that the Permittee has inspected the Premises and knows the condition thereof and fully assumes all risks incident to its use.
9. The acceptance of rent by the Permitter shall not be deemed a waiver of any breach by the Permittee of any term, covenant or condition of this Permit nor of the Permitter's right to declare and enforce a forfeiture for any such breach, and the failure of the Permitter to insist upon strict performance of any term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition or option.
10. Should this Permit on a month-to-month basis extend for a period beyond one year from the date of issuance, any renewal of this Permit beyond such one year from the date of issuance shall be only upon approval of the Board of such extension.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin or a physical handicap.
12. Any and all disputes and/or questions arising under this Permit shall be referred to the Chairman of the Board and his determination of such disputes or questions shall be final and binding on the parties.

A D D E N D U M

ADDITIONAL CONDITIONS UNDER WHICH THIS PERMIT IS GRANTED ARE
AS FOLLOWS:

1. The Permittee shall be required to meter all waters used, taken or developed and submit to the State of Hawaii by no later than the 10th day of each month a certified statement of the waters taken, used or developed for the previous month together with a payment for the water taken, used or developed.

Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind said persons, and each of them jointly and severally.

DATED:

November 29

, 19 85

STATE OF HAWAII

By

S. Chu
Chairperson and Member
Board of Land and
Natural Resources

Approved by the Board
at its meeting held on

September 13, 1985

Item F-1-b

By

W. M. J. J. J.
Member, Board of Land
and Natural Resources

PERMITTEE

KILAUEA IRRIGATION COMPANY, INC.

By

D. L. Heston
Its: President

And By

M. V. D. D.
Its: Vice President

APPROVED AS TO FORM:

Deborah M. Long
Deputy Attorney General
Dated: 9-13-85

STATE OF HAWAII)
 : SS.
CITY AND COUNTY OF HONOLULU)

On this 7TH day of NOVEMBER, 1985,
before me appeared R. L. HERBERG
and G. C. WENTWORTH to me personally known, who,
being by me duly sworn, did say that they are the
PRESIDENT and VICE PRESIDENT
respectively, of KILAUEA IRRIGATION COMPANY, INC. and that
the seal affixed to the foregoing instrument is the corporate
seal of said corporation, and that said instrument was signed
and sealed in behalf of said corporation by authority of its
Board of Directors, and the said R. L. HERBERG and
G.C. WENTWORTH acknowledged the instrument to
be the free act and deed of the corporation.

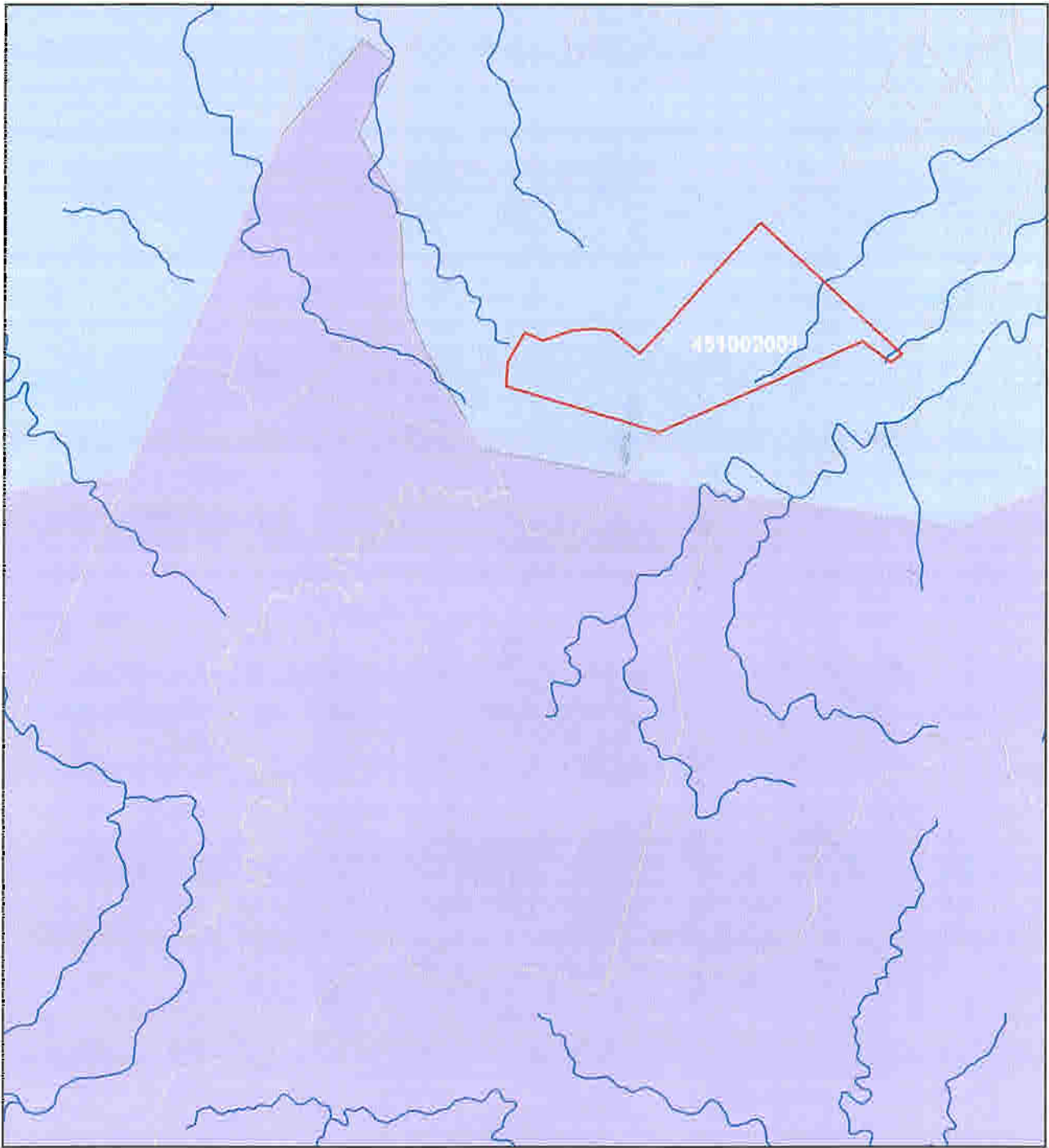
Rich H. Murata
Notary Public, State of Hawaii
My Commission Expires: 3/22/89

STATE OF HAWAII)
 : SS.
COUNTY OF)

On this _____ day of _____, 19____,
before me appeared _____
and _____ to me personally known, who,
being duly sworn, did say that they are the _____
and _____ respectively, of _____
_____ and that said instrument was
signed in behalf of said corporation by authority of its Board
of Directors, and the said _____ and
_____ acknowledged the instrument to be
the free act and deed of the corporation and that the corporation
has no corporate seal.

Notary Public, State of Hawaii
My Commission Expires:

EXHIBIT "A"



Legend

State Land Use Classifications

LUDCODE





	A
	C
	R
	U

EXHIBIT "B"

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

August 24, 2007

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

William J. Wynhoff, Esq.
State of Hawai'i
Department of the Attorney General
Land Transportation Division
Room 300, Kekuanao'a Building
465 King Street
Honolulu, Hawai'i 96813

Department of Land and Natural Resources
State of Hawaii
Kalanimoku Bldg.
1151 Punchbowl Street
Honolulu, Hawai'i 96813
Attention: Laura H. Thielen, Interim Chairwoman

Public Utilities Commission
465 South King Street, Room 103
Honolulu, Hawai'i 96813
Attention: Carlito Caliboso

RE: Kaloko Dam and Reservoir

Dear Mr. Wynhoff:

This is in follow-up to our letters of December 12, 2006, in which we, on behalf of our client Pflueger Properties, issued to the DLNR and the PUC a notice and demand as follows:

On behalf of Pflueger Properties, owners of part of the land beneath the Kaloko Reservoir, demand is hereby made to the State of Hawaii to cease and desist forthwith the diversion of water into the ditches which outlet to the Kaloko Reservoir. Until further notice, the aforesaid action is deemed necessary to prevent and/or to mitigate conditions which could lead to the breach of the Reservoir and/or its appurtenant facilities.

167656.1

P.O. Box 2800 • Honolulu, Hawaii 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawaii 96813
Telephone: (808) 529-7300 • FAX: (808) 524-8293

LAND/TRANS. DIV.
DEPARTMENT OF
ATTORNEY GENERAL

2007 AUG 27 A 11:50

EXHIBIT "C"

William J. Wynhoff, Esq.
August 24, 2007
Page 2

Since our letter, the State has taken no action, whatsoever, to cease the diversion of its water into the Ka Loko Reservoir, pursuant to the demand. On the other hand, Governor Lingle has reaffirmed the State's position—that is, that dam owners are solely responsible for dam failures, regardless of the obligations of dam operators or the State itself—by signing into law Act 262 (Senate Bill 1946) relating to dam safety, on July 6, 2007.

As you are aware, Pflueger Properties does not have and has never had a permit authorizing it to enter State lands, on which the majority of the Ka Loko Ditch is located, to divert water away from Ka Loko Reservoir. Pflueger Properties also is without authority to terminate or disrupt the operations of Kilauea Irrigation Company, Inc., a public utility with which Pflueger Properties has no affiliation or contractual privity. We therefore reassert our demand, made in the interest of public safety, that the State immediately take action to cease diversion of its water into the Ka Loko Reservoir.

Please contact the undersigned should you have any questions concerning the foregoing.

Very truly yours,

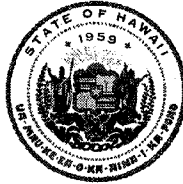
McCorriston Miller Mukai MacKinnon LLP



William C. McCorriston

cc: Michael W. Gibson, Esq.
Kenneth S. Robbins, Esq.
Dennis K. Ferm, Esq.
Harvey E. Henderson, Esq.

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL

LISA M. GINOZA
FIRST DEPUTY ATTORNEY GENERAL

**STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
LAND TRANSPORTATION DIVISION**

Room 300, Kekuanao'a Building
465 King Street
Honolulu, Hawaii 96813
Fax: (808) 587-2999

WRITER'S DIRECT LINE
(808) 587-2993

WRITER'S E-MAIL
bill.j.wynhoff@hawaii.gov

December 22, 2006

William C. McCorriston, Esq.
5 Waterfront Plaza, 4th Fl.
500 Ala Moana Blvd.
Honolulu, Hawai'i 96813

Michael W. Gibson, Esq.
Ashford & Wriston
P. O. Box 131
Honolulu, Hawai'i 96810

RE: Kaloko Dam and Reservoir

Dear Mr. McCorriston and Mr. Gibson:

This division of the Department of Attorney General represents the Department of Land and Natural Resources. The department forwarded to us Mr. McCorriston's letter dated December 12, 2006, and Mr. Gibson's similar letter dated December 14, 2006.

We disagree with your assessment as to legal responsibility for dam and reservoir safety issues. Notwithstanding that disagreement, we respond to your letters as follows.

As you know, the department issued Revocable Permit No. S-6240 to Kilauea Irrigation Company, Inc. ("KIC") on November 1, 1985. The permit has been renewed annually thereafter. The permit allows KIC to "develop and utilize government waters from government land at Papaa within the Moloaa Forest Reserve, together with the right to construct, operate, repair and maintain a water transportation system within the Ka Loko Ditch Right of Way and Puu Ka Ele Stream." Water is being diverted to the reservoir by KIC, pursuant to this permit.

KIC, in turn, is party to a Water Rights Agreement with the Lucas Trust. We understand that Pflueger Partners, as partial successor to the Trust, is also a party to or bound by that Agreement. If that is not correct, please explain.

December 22, 2006

Page 2

In light of this background and in order for the department to respond to your letters, we request the following information.

First, we understand that a Hawai'i limited partnership named Pflueger Partners is the owner of part of the land beneath the Kaloko Reservoir by deed recorded in Book 23536, page 169. Please advise as to when Pflueger Partners was formed and registered in the State, who its general and limited partners are, and where its principal place is located. Mr. McCorriston's letter refers to Pflueger Properties as the owner of the property. If that is so, please send us a copy of the deed by which title was transferred.

Second, do either of you have information specifically indicating that diversion of water into the reservoir raises a safety issue? Please provide a copy of any studies, reports, recommendations, or documents of any kind relating to safety concerns supporting your request.

Third, we are informed of a second source of water to the reservoir, of unknown origin. Please provide all available information as to this source, including date of installation, plans and specifications for its construction, origin of the water, any documentation as to authorization for use or diversion of the water, and your plans (if any) to cease and desist receiving water from this second source.

Fourth, what communications have you had with KIC requesting or demanding that it cease diverting water into the reservoir? What actions have you taken to terminate or cancel the Water Rights Agreement?

After we receive and review the information provided in response to this letter and after we communicate directly with KIC, we will contact you further to discuss your request. Please be advised that the department may need to undertake additional investigation as to both the present status of the dam and the possible impact of any proposed action in the original watershed.

Very truly yours,

/s/

William J. Wynhoff
Deputy Attorney General

WJW:w